HON'BLE SRI JUSTICE G.CHANDRAIAH

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P. No. 19977 of 2015

DATE: 10.07.2015

Between:

M/s. GSL Coal Sales Pvt. Ltd. .. Petitioner

and

The Commercial Tax Officer
and five others .. Respondents

O R D E R:- (per Hon'ble Sri Justice Challa Kodanda Ram)

The issue involved in this writ petition is whether the petitioner is liable to pay service tax/VAT with respect to transportation of Ready Mix Concrete.

The brief facts of the case are that the 1st respondent-Commercial Tax Officer issued Assessment Order confirming the proposals made in the Notice of assessment to levy VAT on the petitioner for the period from 2009-10 to 2010-2011 (up to 30.09.2010). Being aggrieved by the Assessment Order, the petitioner filed an appeal along with an application seeking stay of recovery of disputed tax, and the 3rd respondent - Appellate Deputy Commissioner dismissed the stay application, against which, the petitioner preferred a Revision Application along with a petition seeking stay of recovery of the disputed tax. Now, the main grievance of the writ petitioner is that the 2nd respondent-Joint Commissioner (CT), without considering the submissions made by the petitioner, rejected the application for stay, and consequently, the 1st respondent-Commercial Tax Officer issued Arrear Notice demanding the petitioner to pay the balance disputed tax. Challenging the order of rejection of stay, the present writ petition is filed seeking appropriate directions.

The learned counsel for the petitioner has submitted that pending consideration of the appeal before the 3rd respondent, the petitioner paid 1/3rd of the demanded tax. It is further submitted that the 2nd respondent, without assigning any reasons, rejected the application for stay by merely extracting the arguments of the petitioner and there is a total non-consideration of the contentions raised by the petitioner as to why the stay of collection of the disputed tax could not be granted. It is also submitted that this Court, on earlier occasions, considered grant of absolute stay in other writ petitions wherein similar issue is involved, and prays that the case of the petitioner may be considered for grant of stay of recovery of disputed tax.

Having considered the submissions of the learned counsel for both the parties and considering the fact that this Court has already entertained writ petitions by granting absolute stay in respect of cases where assessment orders relating to similar issue have been challenged and in view of the fact that the petitioner has already paid service tax and further deposited 1/3rd of the disputed tax, and also the very liability of tax is in issue, we deem it appropriate to dispose of the writ petition with the following direction:

> "There shall be stay of collection of balance amount of the disputed tax pending disposal of the appeal preferred by the petitioner before the 2nd respondent-Joint Commissioner (CT).

With the above direction, the writ petition is disposed of. No order as to costs.

As a sequel to the disposal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

10.07.2015

CHALLA KODANDA RAM,J

bcj